

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2004-000694-001 DT

03/01/2005

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED:\_\_\_\_\_

RHEA ANN DRUMM

THOMAS M SHAW

v.

CLAYTON HAMBLEN (001)  
STATE OF ARIZONA (001)

DOUGLAS W JANN

MINUTE ENTRY - RULING

This Court has jurisdiction over special actions pursuant to the Arizona Constitution Article VI, Section 18, and Rule 4, Arizona Rules of Procedure for Special Actions.

This matter has been under advisement since the time of oral argument on February 23, 2005, and the Court has considered and reviewed the memoranda and oral arguments submitted by counsel.

Acceptance of special action jurisdiction is highly discretionary.<sup>1</sup> Jurisdiction is generally accepted only in those cases in which "justice cannot be satisfactorily obtained by other means,"<sup>2</sup> and may be assumed to correct plain and obvious errors.<sup>3</sup> Rule 3 of the Arizona Rules of Procedure for Special Actions states:

The only questions that may be raised in a special action are:

- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or

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<sup>1</sup> *Pompa v. Superior Court In and for the County of Maricopa*, 187 Ariz. 531, 931 P.2d 431, 235 Ariz. Adv. Rep. 27 (App. 1997); *State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 155, 835 P.2d 485, 487 (App. 1992).

<sup>2</sup> *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983); see also *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App. 1996).

<sup>3</sup> *Amos v. Bowen*, 143 Ariz. 324, 326, 693 P.2d 979, 981 (App. 1984); *State ex rel. Collins v. Superior Court of State of Arizona*, 129 Ariz. 156, 629 P.2d 992 (1981).

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- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

Additionally, special action jurisdiction by an appellate court is appropriate where an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again. In this matter, special action jurisdiction will be exercised to resolve a purely legal question concerning the jurisdiction of the state over crimes committed by non-Indians on an Indian reservation. Additionally, this issue is a matter of statewide importance and is likely to arise again.

On February 26, 2004, Petitioner, Rhea Ann Drumm, was stopped by an officer from the Salt River Indian Police Department outside of Casino Arizona, which is located within the Salt River Pima Maricopa Indian Community. The officer spoke with Petitioner and noticed a strong odor of alcohol on her breath. Petitioner submitted to breath tests and was thereafter arrested and cited for three counts of Driving Under the Influence of Intoxicating Liquor (DUI), class 1 misdemeanors, and for failure to stop, a civil traffic violation. Prior to trial, Petitioner filed a Motion to Dismiss for lack of jurisdiction contending that the justice court lacked jurisdiction over her case because the alleged acts occurred on Indian land. The Respondent Judge denied Petitioner's Motion. Petitioner then filed this petition for special action.

It is well established that a state court has no subject matter jurisdiction to try a case where the criminal defendant or a victim is a Native American and the crime was committed on a reservation.<sup>4</sup> However, the state has exclusive jurisdiction over crimes committed by non-Indians against non-Indians on an Indian reservation.<sup>5</sup> The state may also exercise jurisdiction over victimless crimes committed by non-Indians on a reservation.<sup>6</sup> The state's jurisdiction over these crimes is based on the fact that "such crimes do not involve essential tribal relations or affect the rights of Indians."<sup>7</sup> The defendant bears the burden of proving lack of state court jurisdiction and a showing that she is a Native American.<sup>8</sup>

The Petitioner argues that Federal law pre-empts State law in regards to crimes involving liquor and gambling on an Indian reservation. This is true only when the "defendant or victim is

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<sup>4</sup> *State v. Verdugo*, 183 Ariz. 135, 137, 901 P.2d 1165, 1167 (App. 1995).

<sup>5</sup> *State v. Sorkhabi*, 202 Ariz. 450, 452, 46 P.3d 1071, 1073 (App. 2002); *State v. Flint*, 157 Ariz. 227, 231, 756 P.2d 324, 328 (App. 1998).

<sup>6</sup> *Sorkhabi*, 202 Ariz. at 450; see *State v. Burrola*, 137 Ariz. 181, 182-83, 669 P.2d 614, 615-16 (App. 1983).

<sup>7</sup> *Flint*, 157 Ariz. at 231, 756 P.2d at 328.

<sup>8</sup> See *Verdugo*, 183 Ariz. at 138, 901 P.2d at 1168.

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an Indian and the crime was committed within Indian country, as defined by federal statute.”<sup>9</sup> Nothing in applicable Federal Law precludes a State’s exercise of jurisdiction over victimless crimes committed by non-Indians on an Indian reservation.<sup>10</sup> There is no victim in this case.

There is no issue of an infringement on tribal sovereignty in this case as Petitioner asserts by citing Confederated Tribes of the Colville Reservation v. Washington.<sup>11</sup> In that case, Petitioner was an enrolled member of the Tribe. Accordingly, the Ninth Circuit concluded that the State of Washington did not have jurisdiction over on-reservation Indians.<sup>12</sup> Here, the Petitioner has failed to establish that she is an enrolled member of the Salt River Pima Maricopa Community. The Petitioner’s argument that because she is an adopted person who does not know her biological parents’ heritage, she “may” be a Native American is far too speculative.<sup>13</sup> No evidence was presented to the Respondent Court that the Petitioner in this case was truly a member of the Salt River Pima Maricopa Indian Community. Rather, it clearly appears that she was on the reservation for purposes of gambling at the casino (and perhaps drinking), and not for purposes of getting in touch with her possible Native American heritage.

The Respondent Judge did not abuse his discretion by denying Petitioner’s Motion to Suppress and/or Motion to Dismiss Charges for Lack of Jurisdiction. This Court concludes that the Respondent Court has jurisdiction to adjudicate this matter.

IT IS THEREFORE ORDERED accepting jurisdiction of this special action, but denying all relief as requested by the Petitioner.

/ s /       HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>9</sup> Id. at 137.

<sup>10</sup> See 18 U.S.C. §§ 1154, 1156, 1161, 3113, 3488, and 3669 (2005).

<sup>11</sup> 938 F.2d 146 (9th Cir. 1991).

<sup>12</sup> Id. at 149.

<sup>13</sup> Though certainly amusing.